

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

UNITED STATES OF AMERICA	:	
	:	
Plaintiff,	:	Criminal Action
	:	No. 1:20-cr-82
v.	:	
	:	
JOHN WILLIAM KIRBY KELLEY,	:	March 15, 2021
	:	9:00 a.m.
	:	
Defendant.	:	Washington, D.C.
	:	
.....	:	

TRANSCRIPT OF SENTENCING PROCEEDINGS
BEFORE THE HONORABLE LIAM O'GRADY,
UNITED STATES DISTRICT COURT JUDGE

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MORNING SESSION, MARCH 15, 2021

(9:08 a.m.)

THE COURTROOM CLERK: The Court calls *United States of America versus John William Kirby Kelley*, Case Number 2020-cr-82.

May I have appearances, please, first for the government.

MS. CUELLAR: Good morning, Your Honor. Carina Cuellar on behalf of the United States.

THE COURT: All right. Good morning to you. Welcome back, Ms. Cuellar.

MS. CUELLAR: Thank you, Your Honor.

MS. MERTZ: Good morning, Your Honor. Cadence Mertz and Nathaniel Wenstrup on behalf of Mr. Kelley, who is present.

THE COURT: All right. Good morning to you both, and good morning, Mr. Kelley.

THE DEFENDANT: Good morning, Your Honor.

THE COURT: All right. This comes on for sentencing. Are the parties ready to proceed?

MS. CUELLAR: Yes, Your Honor.

MS. MERTZ: Yes, Your Honor.

THE COURT: All right. Let's start with the objections to the calculation of the Sentencing Guidelines. And, Ms. Mertz, you have objected to the enhancement under 3A1.1(a) for the hate crime motivation, and also 3A1.2(a), that the conspiracy targeted government officials, among others.

There's one other objection, and that's to the language in

1 the special conditions, the number 13, and I think that the --
2 and I'll hear any argument that you have on that, but I think the
3 government's response in adding the words "if the Court
4 determines in consultation" is an appropriate revision to narrow
5 the authority of the probation officer.

6 Please, go ahead. I'll hear anything else that you would
7 like to say now.

8 MS. MERTZ: Thank you, Your Honor. Your Honor, just
9 briefly. We would agree with the revisions to the standard
10 condition 13. Our concern there is only the breadth as it was
11 worded.

12 THE COURT: All right.

13 MS. MERTZ: Your Honor, originally we had actually
14 intended to rest on our papers on these objections to the
15 Guidelines. However, in light of the government's supplement, I
16 just briefly wanted to respond. We are making legal arguments,
17 legal-based objections to the Guidelines based on the particular
18 wording and requirements for each.

19 So, 3A1.1, the hate crime enhancement, requires a very
20 high level of proof, much higher than what is seen normally in
21 other enhancements in the Guidelines, and our point is simply
22 that that level of proof has not been demonstrated here. It's a
23 beyond a reasonable doubt standard with respect to the defendant.

24 Your Honor, this is a case where Mr. Kelley agreed to
25 plead guilty to a charge very early, and for that reason we did

1 not receive the kind of discovery we might have had had we gotten
2 closer to trial. Many of the arguments the government has made
3 are based on facts that aren't -- we have not been provided with.

4 That said, our point is simply that the standard for 3A1.1
5 is extremely high and has not been met with respect to
6 Mr. Kelley.

7 And secondly, with respect to 3A1.2, again, we would just
8 cite a lack of evidence. The DoxBin site or list that is
9 referred to we have not seen, and the requirement in that
10 Guideline is that the person's official status be the motivation
11 for the offense, and we submit simply that that is not shown
12 here, that the one government official that we know about, there
13 was an attempted swatting. We learned the identity of that
14 person much, much later, more than a year later. We simply
15 haven't seen that that was the motivation for this conspiracy.

16 THE COURT: Well, are you asking for a continuance so that
17 you can get the additional information? I'm not quite sure -- I
18 mean, the case has obviously been around for quite a while, and I
19 don't -- Mr. Kelley -- we went over in detail at his plea
20 colloquy the Statement of Facts and the criminal information, and
21 that information is contained in each of those documents, so
22 I'm -- if you want a continuance to do further research on the
23 issue, I certainly will give you that opportunity to do that,
24 but, otherwise, we're both in a position where we're looking at
25 the papers and information that's been agreed to and then, of

1 course, your conversations with your client that are
2 confidential. So tell me what you would like.

3 MS. MERTZ: Your Honor, we're not asking for a
4 continuance. We think that there's ample information in the
5 record for the Court to go forward with sentencing today. We
6 would simply submit that the government has not met its burden on
7 either of these.

8 THE COURT: All right. Thank you, Ms. Mertz. All right,
9 Ms. Cuellar.

10 MS. CUELLAR: Your Honor, for the reasons in the paper
11 that we filed, both papers, the initial paper and the
12 supplemental paper over the weekend, we do think that we've met
13 our burden.

14 I'll start with the easiest one first, which is the
15 official position. As we pointed out in our paper, both the
16 criminal information and the Statement of Facts refer to DoxBin
17 and exactly who was being targeted in DoxBin. One of the things
18 put there was government officials.

19 As we -- we have also, I believe, provided in discovery
20 when we spoke with them -- I can put the agent on the witness
21 stand. After the co-conspirators successfully doxxed one of
22 these individuals, they also placed a gun next to the name of the
23 individual.

24 So, certainly by a preponderance of the evidence, if you
25 look at the court filings, which the United States took pains not

1 to refer to any information not in the record, you have a group
2 of co-conspirators who are maintaining this DoxBin site. The
3 defendant was familiar with this site and doxxed individuals.
4 The purpose of the site was not to dox unknown individuals, but
5 to dox government officials, celebrities, other people who are
6 prominent in our society.

7 It's simply beyond belief to think that they accidentally
8 found this individual's address in Old Town who happened to be a
9 sitting U.S. cabinet member and doxxed this person not knowing
10 who this individual was.

11 So, I think the -- we have met that both factually and
12 legally, that burden, simply on the filing of the papers.

13 As to the hate crime enhancement, ultimately I won't go
14 over again everything that's in the filing, but ultimately here
15 what you have is a defendant who was part of a conspiracy that
16 targeted individuals. Some of these individuals were targeted
17 for racial or religious reasons. The defendant agreed that that
18 was the motivation that he knew of in the filed paperwork. And
19 it is not the -- the facts before the Court are that the
20 defendant continued to be a part of this conspiracy knowing that
21 this was one of the motivations.

22 Further, and we can -- I will get more into this when we
23 discuss the differences we have with how we view this conspiracy
24 between the two parties. The defendant was an important member
25 of the conspiracy. He is the one that hosted the channel. He's

1 the one that's hosting the channel where the co-conspirators are
2 actually engaging in the conspiracy together, where they are
3 talking about and choosing targets, and the records -- the
4 defense has the records. He is in there almost daily. And for
5 co-conspirator 3 and Mr. Denton, he knew these individuals before
6 they joined this conspiracy.

7 So, with Mr. Denton, he actually met him online in Discord
8 in a chat devoted to white supremacists' views which, again, is
9 Constitutionally protected. The issue here -- he's not being
10 prosecuted for that or for his views; the issue is, was he
11 knowingly a part of and continuing to be a part of a conspiracy
12 that was targeting individuals for racial reasons? And the facts
13 before this Court in the actual plea documents are "absolutely."
14 He continued to be a part of that conspiracy knowing that. And
15 even though we disagree with some of the things the defendant
16 wrote in his letter to the Court, in his letter to the Court the
17 defendant acknowledged that he knew his co-conspirators were
18 targeting people for these racial reasons.

19 Now, he said he didn't agree with it, and we can deal with
20 that separately, but he acknowledged that he knew his
21 co-conspirators were targeting people in his very own letter.
22 So, in his own words to this Court, he was knowingly a member of
23 a conspiracy that was committing hate crimes, Your Honor.

24 THE COURT: All right. Thank you. Well, I'm -- I think
25 both of the enhancements apply in the case, and, as Ms. Mertz

1 pointed out, the hate crime motivation under 3A1.1(a) requires
2 that the Court find beyond a reasonable doubt that the object of
3 the -- an object of the conspiracy was to target persons for
4 racial animus, and the facts are uncontroverted, and Mr. Kelley
5 has admitted in the Statement of Facts and as detailed in the
6 criminal information that this conspiracy did exactly that.

7 And moreover, as Ms. Cuellar has just pointed out, he had
8 conversations with Mr. Denton and one of the other
9 co-conspirators about their racist views, and he was somebody
10 that was trusted by Mr. Denton because he appeared to agree with
11 him during the course of the conspiracy, and clearly the Baptist
12 church here in Old Town that was targeted was a reflection of a
13 racial animus.

14 There was also an Islamic center and another church
15 targeted, and these, as the facts reflect that I'm aware of, the
16 group, when they chatted about who their next target would be,
17 co-conspirators 1 and 2, who were from out of the country, were
18 seeking help in selecting the next target to be swatted.

19 And so the -- there was no randomness to this. It was an
20 attempt to get notoriety. The ProPublica swatting, all
21 indications were, and the facts of this case are clear, that they
22 carefully chose this, you know, 134 different targets, and did so
23 knowingly, and that, as I indicated, in the Statement of Facts
24 Mr. Kelley admits that in paragraph 10 the defendant was aware
25 that some co-conspirators chose individuals or locations to swat

1 based on racial animus.

2 In particular, the defendant was aware that Denton,
3 co-conspirator 2, and co-conspirator 3, expressed white
4 supremacist views. The defendant communicated with these
5 individuals about their white supremacist views and used racial
6 epithets. And, of course, some of those were detailed in the
7 government's position. So, I find that the facts demonstrate
8 beyond a reasonable doubt that there was hate crime motivation
9 for the racist views.

10 And as to the government official, there's just, for the
11 reasons I've already stated, but it's absolutely clear that this
12 cabinet member was targeted on DoxBin and that the -- again, the
13 Statement of Facts in paragraph 21 states, "From in and around
14 October of 2018, conspirators maintained a dark net site known as
15 DoxBin. The site was a repository of the personally identifiable
16 information of potential and past swatting targets. The
17 conspirators indicated on DoxBin that an individual had been
18 swatted by placing a gun symbol next to the name of the person
19 swatted. The DoxBin website primarily targeted government
20 officials, executives, journalists and celebrities." The
21 defendant took part in doxxing individuals, so under the
22 preponderance of the evidence standard and the facts surrounding
23 the cabinet members being swatted, I find that the application of
24 3A1.2(a) applies.

25 Ms. Mertz, are there other objections to the Guideline

1 calculation?

2 MS. MERTZ: No, Your Honor.

3 THE COURT: All right. Then I'm -- your exception is
4 noted. Of course, I'm not going to modify the Guideline
5 calculation, and, after acceptance of responsibility, the offense
6 level of -- is it 24? Mr. Kelley's a criminal history
7 Category 1. The Guideline range then is 51 to 60 months, one to
8 three years of supervised release, and a possible fine.

9 Ms. Mertz, are there other corrections, additions that you
10 propose to be made to the presentence report?

11 MS. MERTZ: No, Your Honor. I would just note that we
12 will still be asking for a variance sentence.

13 THE COURT: Right. I understand.

14 Mr. Kelley, did you read the presentence report, sir? You
15 can remain seated.

16 THE DEFENDANT: Yes, I have, Your Honor.

17 THE COURT: Do you have any other additions or corrections
18 that you want to make to any of the information in the report?

19 THE DEFENDANT: No.

20 THE COURT: All right. Thank you, sir. I'll file the
21 report without amendment. I've read the parties' submissions,
22 and, Ms. Cuellar, I'll hear anything that you would like to say
23 on sentencing.

24 MS. CUELLAR: Your Honor, every case that comes before
25 this Court is quite serious, and many of these cases involve

1 victims. I think very few involve this many victims, and,
2 thankfully, even fewer involve victims who have been targeted for
3 racial reasons. So this case is very serious, and the
4 Guidelines, I think, reflect that seriousness, and we are asking
5 for 60 months, which is at the high end of the Guideline range.
6 For the reasons articulated in our papers, the harm to the
7 victims, the harm that's actually done to society by this type of
8 conduct, the need for deterrence, and the need to avoid
9 unwarranted sentencing disparities, all counsel for the 60
10 months.

11 Now, one of these victims is just down the road from here,
12 approximately a mile, and the members of that church are still
13 living with the aftereffects. As you read in the Victim Impact
14 Statement, they deal with bad checks, they deal with security
15 checks from what happened that Saturday evening in November of
16 2018 when they all huddled in place while the Alexandria Police
17 Department swept their church for bombs. The Islamic Center as
18 well. A bomb threat was called in to them. Thankfully, that
19 evening there was actually a community center get-together with
20 the police, so the police were actually there that evening when
21 the bomb call was called in.

22 But rather than restate what's in our paper, I would
23 simply like to address the different way we believe the facts
24 bear out what this conspiracy was, as opposed to what the
25 defendant presented in their paper. And I think there's a

1 difference with not only how we view the conspiracy, but the
2 defendant's role in the conspiracy.

3 My takeaway when I read the paper is that the defendant
4 had a chat online and then some people kind of came in, took it
5 over, and because of his disability and his desire to have
6 friends, he didn't stand up, but he wasn't really a part of it.
7 That's the impression that the United States got from reading
8 that paper. And the facts that are, quite frankly, in the filed
9 documents show that that's not the case.

10 So, the defendant was interacting with Mr. Denton before
11 this conspiracy started in a white supremacist chat room on
12 Discord, and he was friends with co-conspirator 3. He actually
13 drove out in a Vespa to West Virginia to meet with co-conspirator
14 3. He knew these individuals' motivations. And the swatting
15 started before Mr. Denton ever came into that chat room. And
16 some of it, no doubt, was for humor or because it was funny.
17 They did often regularly target individuals who were so-called
18 online gamers because they videoed themselves as they played
19 games with the desire to see what would be law enforcement's
20 response to the swatting, but it is not the case that this
21 conspiracy took a dark turn and the defendant kind of stood by
22 while more powerful people were doing things he didn't support.
23 He was there when this was going on for quite some time, and he
24 was there when they were choosing targets, and he knew the
25 various motivations, and he was the host of the chat room. I

1 think what is quite telling is, after his university was swatted
2 and he was talked to by the police -- and I think there's a
3 slight difference here. The defendant's filing says he spoke to
4 the police about his role in the swatting. He didn't actually at
5 the time. He spoke about he's familiar with swatting and he has
6 seen swatting. He did not speak about any role he particularly
7 had with the ODU swatting that evening. That was something we
8 had to piece together through the federal investigation.

9 He came back after the second swatting event, so ODU had
10 to be locked in place twice. It was swatted in a very short
11 period, and you have a victim impact letter from them. And he
12 comes back into that chat room on December 5th, and he talks
13 about, "Let's get a VPN going through the Netherlands." And, of
14 course, I think the Court is well-familiar with the fact that a
15 VPN can hide your true IP address, which can make it harder for
16 law enforcement to locate who's involved in a conspiracy.

17 So the response -- at this point many swatting events
18 occurred, many serious ones: Alpha Street Baptist Church. The
19 Islamic Center happened. The response is to double down and
20 protect the conspiracy.

21 So, the facts show that this young man was not overpowered
22 by these individuals. He was a committed member of this
23 conspiracy, and I think that's the main issue to keep in mind
24 when you evaluate whether 51 to 60 months is appropriate.
25 There's simply nothing in this particular case that counsels for

1 anything but a Guideline sentence.

2 This is quite a serious case. It is outside of the norm
3 of even the most serious cases that come to this Court. And we
4 fully agree that the defendant is a young man, that he has a long
5 future ahead of him. We hope he can grow from this and that he
6 receives the support he needs that, quite frankly, it does not
7 seem he has received in his childhood growing up.

8 And our attempt -- the United States' attempt to balance
9 those equities is to charge him with a crime with a five-year
10 maximum sentence.

11 Now, ultimately, it's not the United States that is
12 entrusted with determining and balancing the equities, it's this
13 Court, and so I simply put to you, Your Honor, that considering
14 how serious this case is, the breadth, the number of victims, and
15 the fact that victims were targeted for racial reasons, that this
16 is a case that calls for serious punishment for both justice for
17 the victims, but also to deter others in this country from
18 engaging in swatting which is an issue of itself, and the
19 resources and the harm that it causes -- a small community in
20 this country even sheltered in place when one of these threats
21 was called in -- but also to send a message that targeting people
22 for racial reasons is simply unacceptable and will be punished by
23 the courts in this country. Thank you, Your Honor.

24 THE COURT: All right. Thank you, Ms. Cuellar. All
25 right, Ms. Mertz.

1 MS. MERTZ: Thank you, Your Honor. Your Honor, in *Pepper*
2 *v. United States*, the Supreme Court made crystal clear that the
3 Court at sentencing has to consider the individual before it, and
4 that that is one of the key considerations. Who is this person?
5 What are their characteristics? What is their background? It is
6 critical to remember that when Mr. Kelley created the chat room
7 that he has fully acknowledged that he created and fully admitted
8 his involvement in what it became, it took a dark turn with him
9 at the helm, and he agrees with that, but he was 17 years old
10 when this chat room was created, when he created it, and he was
11 18 during the conduct that is at issue here. In fact, he turned
12 18 while the conduct at issue here was going on.

13 When his participation in this conspiracy ended, he was
14 still only 18. Not only is he 18 -- was he 18 at the time, he
15 has -- he has been diagnosed since four years old with
16 significant deficits. These do impair his ability to recognize
17 how something that he does will harm others. What's important
18 here is that this prosecution, this federal felony prosecution
19 has been able to demonstrate for him unmistakably that he needs
20 to make those connections, he needs to see how what he does, even
21 if he thinks it's a joke and he's laughing with his friends, how
22 it can impact other people.

23 At 17 years old, he created this Website. The other
24 people, most of them also minors who were involved in this, will
25 never stand before this Court. The only other person, to the

1 defense's knowledge, who will stand before this Court is
2 Mr. Denton. Mr. Denton and Mr. Kelley are not at all similarly
3 situated. As we explained in our papers in some detail, the
4 government's -- the sentence that the government asks for would
5 put them on an even footing. There would be no way for this
6 Court to distinguish between Mr. Kelley at the age of 17 and 18
7 involved in this and Mr. Denton who was an adult with a job and a
8 totally different upbringing, from what we've been able to gleam.

9 This Court has to see Mr. Kelley for who he is, and we
10 would submit that the government's request, sentence, does not do
11 that, that it ignores the many challenges that Mr. Kelley has
12 overcome and the -- his age at the time of this conduct and the
13 strides that he has made since that time, and we -- those strides
14 are the best evidence that this Court has that the time that he
15 has spent in custody, already 14 months, more than a year, very
16 significant period of time, is sufficient in Mr. Kelley's case
17 for his conduct.

18 After he left the conspiracy in the spring of 2019, he
19 returned to this area and got a job and went back to school. He
20 had to leave ODU. He didn't want to go to ODU in the first
21 place, but his mother essentially gave him no choice. He knew
22 that going to ODU, frankly, would be difficult for him and
23 obviously it was. But he came back here and he got himself on
24 track. Notwithstanding his challenges, he got himself on track,
25 and he performed the community service he had been ordered to do

1 by the Norfolk Court. He reported to his probation officer, and,
2 by all appearances, it appears that he did everything that he was
3 supposed to do on probation.

4 So, he has shown this Court that these interventions have
5 worked for him and that more jail time is not necessary in his
6 case.

7 Fourteen months, particularly for Mr. Kelley, but for
8 anybody, is a significant period of imprisonment. That's true
9 under any conditions, but for Mr. Kelley those 14 months have
10 been in the time of the global pandemic, and that has made
11 imprisonment even harder for every inmate. It's had significant
12 consequences for the conditions of confinement: No visits;
13 attorney relationship is based almost entirely on phone calls,
14 very brief phone calls and brief video conferences; lock downs,
15 extensive lock downs; and the lack of any kind of really
16 diverting programs that can focus energy elsewhere. What
17 Mr. Kelley has done is gotten a job in his unit, he's been
18 reading books, as many books as he can get from the library cart
19 that comes around, and tried to learn from this experience.

20 He's been -- he has made absolutely clear to us, his
21 defense, his lawyers, and others from our office, he has made
22 crystal clear that these views that he expressed which are
23 hateful and vile are not who he is. In fact, his teachers have
24 written letters saying that all of their interactions with him
25 showed him not to be that person and that he has always been

1 welcoming of others and people who are different from him and
2 people who have had challenges like he has had. Your Honor, he
3 categorically rejects the views that he expressed in those chat
4 rooms, and he has shown this Court that he has learned
5 significantly.

6 It is additionally telling of Mr. Kelley's character and
7 growth that he has managed to spend the last 14 months
8 productively engaged in this case with the Fairfax CSB, which we
9 hope will be able to provide services to him when he gets out,
10 and that he has kept his head up. The counselor who he meets
11 with at the jail reports that he has been productive and really
12 engaged in trying to move forward, to learn from this. He comes
13 to their meetings with notes prepared to get the most out of them
14 that he can.

15 Your Honor, we submit that a sentence of 60 months, the
16 statutory maximum, is simply far more than is necessary in this
17 case; that the 14 months that Mr. Kelley already has served is
18 sufficient for him. It will be followed, no doubt, by a lengthy
19 period of supervised release, and Mr. Kelley would -- will be
20 involved with the Fairfax Community Services Board, we expect,
21 which would also be helping him.

22 Your Honor, Mr. Kelley has not had any family support,
23 really, through this process, which is difficult at an older age
24 but even more difficult when you're 19 and you're arrested. His
25 friend, Brett, who submitted a letter to the Court, is here

1 today, but Mr. Kelley has done a lot with the little support that
2 he has, and we would ask the Court to sentence him to a sentence
3 of 14 months and a period of supervised release.

4 Your Honor, whatever sentence the Court does impose, I
5 would like afterwards to address how the sentence is imposed, if
6 I may.

7 THE COURT: Okay. All right. Thank you, Ms. Mertz.
8 Mr. Kelley, this is your opportunity to tell me anything that you
9 would like to before I sentence you, sir.

10 THE DEFENDANT: All right.

11 THE COURT: Please, go ahead. You can take your mask
12 down.

13 THE DEFENDANT: All right.

14 THE COURT: You can sit, if you would like to make sure I
15 can hear you.

16 THE DEFENDANT: All right. Thank you, Your Honor. I
17 understand the severity of the situation and know now that it
18 isn't a game. Ever since I left the group in 2019, I deeply
19 regretted the mistakes that I made. The racial language that's
20 been expressed by me and my co-conspirators, along with the
21 swatting attacks, do not represent my values and beliefs.

22 Furthermore, I was personally disgusted by the direction
23 that the chat room took after my departure and made it a personal
24 mission to improve and separate myself from bad influences such
25 as these. I've also read the letters from the victims and

1 reflected on their experiences. To them, I would like to
2 apologize for the losses and hardships experienced by these
3 swats. Nobody should have to have gone through that, and I am
4 really sorry for what I have done.

5 Finally, I would like to address the period of
6 incarceration that I have gone through. Because of COVID-19, the
7 jail has been on quarantine lockdown. There's been no gym
8 programs or real visits since last year. I've tried -- I have
9 also tried to attend the self-care to the best of my ability;
10 however, the jail's barbershop has been closed to my unit since
11 November. It has been really challenging to deal with this
12 constant -- um, this constant isolation mentally. I'm locked in
13 my cell 21 hours a day and rarely get to have meaningful
14 conversations with people because of the isolation. This has
15 made my social anxiety worse, and I felt more depressed recently.
16 I can't sleep most nights, and I get panic attacks a lot.

17 As of today, my unit has been on heavy restrictions for 70
18 days. Even with all of this, I've tried my best to improve.
19 I've stayed out of trouble even before incarceration and complied
20 with state probation.

21 Your Honor, I'm really trying my best, and I hope to
22 return to the community as a better man. Therefore, I ask that
23 the courts not only consider my conduct, my background, and all
24 required factors into consideration, but the hardships that I
25 have overcome in custody during a vulnerable period until its

1 final judgment. Thank you, Your Honor.

2 THE COURT: All right. Thank you, Mr. Kelley. And I hope
3 you wake up every morning and repeat what you just said to me and
4 to yourself and say I'm going to be -- this is another day where
5 I'm going to work at being a better person and living a better
6 life and serving your community. You're a bright young man.
7 You're capable of doing exactly that. Your computer skills are
8 sophisticated, and if you -- it looks to me like you would be
9 interested in a career in computer-related technologies, and you
10 would likely have great success. So your future is very
11 promising. The fact that you went back to school and started
12 classes at Nova was encouraging. The fact that you recognize the
13 harm that you had caused early and came in and pled guilty and
14 have been doing the most that you could do in a positive manner
15 while you've been incarcerated are all very good signs for your
16 future.

17 And I've looked carefully at your upbringing and some of
18 the really unfortunate parts of that, and I've looked at the
19 evaluation by the University of Virginia Forensic Clinic, and
20 I've looked at your personal background carefully. And, as both
21 counsel have said, my job is to look at the nature of the
22 offense, the harm to victims, look at the need to deter you or
23 others from committing this conduct, to look at you personally,
24 you as a person, and combine those factors and arrive at the
25 proper sentence. And, of course, the Sentencing Guidelines are

1 something that every judge must consider as well, and those
2 Guidelines are 51 to 60 months in this case, and they are for a
3 good reason. The harm that you and your co-conspirators caused
4 was very significant. The trauma for those that were at the
5 Alfred Street Baptist church, the trauma to the ProPublica family
6 that was targeted, and just the seriousness of the swatting
7 language used and the position that you put law enforcement in
8 responding to what they believed was going to be the most serious
9 of possible situations where their own lives would be in danger
10 from the supposed callers, all of that has caused great trauma to
11 all of those individuals and to the community and to -- you know,
12 there was clear racial animus here. It was disturbing to see
13 that you had aligned yourself with Mr. Denton and co-conspirator
14 3 knowing that he was an Atomwaffen founder and a clear white
15 supremacist, and I take you at your word that you recognize the
16 seriousness of how wrong that was and that you are going to work
17 to make sure that that never seeps into your mind again. But it
18 just demonstrates how far out you were and how aligned you were
19 with this group.

20 And so the offense is a serious one, as you have
21 acknowledged and that's very clear from the facts, and so a
22 sentence of time served is not appropriate, and it does not take
23 into consideration all of the 3553 factors. And, on the other
24 hand, a Guideline sentence, given your age, given your family
25 history, some of the struggles you've had with your own mental

1 health, is too much time as well.

2 I'm going to sentence you to 33 months of incarceration, a
3 hundred dollar special assessment, three years of supervised
4 release. I'll not impose a fine.

5 As special conditions of supervised release, I'll order
6 that you participate in a program approved by the United States
7 Probation Office for substance abuse, as well as mental health
8 treatment; that you comply with the requirements of a computer
9 monitoring program as administered by the Probation Office; that
10 you not engage in spamming or e-mail bombing. I've signed the
11 restitution order requiring you to pay restitution in the amount
12 of \$7,560.69, and that will be payments of a hundred dollars per
13 month or as directed by the probation officer, depending on your
14 financial situation. I'll give you credit for time served
15 awaiting sentencing.

16 Ms. Mertz, do you have a designation request?

17 MS. MERTZ: Your Honor, we would ask the Court to
18 recommend either -- I think either Petersburg, if it's available,
19 or as close to Northern Virginia as possible.

20 We would -- Court's indulgence.

21 THE COURT: Yes.

22 MS. MERTZ: May I have a minute?

23 (Discussion had off the record between attorney and
24 defendant.)

25 MS. MERTZ: Thank you, Your Honor. Your Honor, we would

1 ask that the Court's judgment include a recommendation for a life
2 skills or mental health assistance while in custody so that
3 Mr. Kelley's designation will account for some of his deficits.

4 THE COURT: Okay. All right. I'm sorry, you said life
5 skills and --

6 MS. MERTZ: Mental health, mental health treatment.

7 THE COURT: All right. I'm happy to make both of those
8 recommendations.

9 MS. MERTZ: Thank you, Your Honor.

10 THE COURT: All right. Anything else in this matter?

11 MS. CUELLAR: No, Your Honor.

12 MS. MERTZ: No, Your Honor.

13 THE COURT: All right. Thank you, counsel. Mr. Kelley,
14 it's all up to you now. You're 20 years old. You have the
15 opportunity to do whatever you want to with your life, and I'm
16 very hopeful that you'll learn from this. To the extent that you
17 can help other juveniles understand how harmful this is, please
18 do so, and I wish you the best, sir.

19 THE DEFENDANT: All right.

20 THE COURT: We're in recess.

21 (Proceedings adjourned at 10:50 a.m.)
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25

C E R T I F I C A T E

I, Scott L. Wallace, RDR-CRR, certify that
the foregoing is a correct transcript from the record of
proceedings in the above-entitled matter.

/s/ Scott L. Wallace

4/1/21

Scott L. Wallace, RDR, CRR
Official Court Reporter

Date